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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL OSCAR GUANTEZ,

Defendant and Appellant.

E074128

(Super.Ct.No. FVI1001321)

OPINION

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata,
Judge. Dismissed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I

INTRODUCTION

Defendant and appellant Manuel Oscar Guantez appeals from an order denying his petition for resentencing under Senate Bill No. 620 (2017-2018 Reg. Sess.) (Stats. 2017, ch. 682, § 2). Appointed appellate counsel filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*); *Anders v. California* (1967) 386 U.S. 738 (*Anders*).) Because defendant is not entitled to *Wende/Anders* review from denial of the challenged postjudgment petition for resentencing, and neither he nor his counsel has raised any claim of error in its denial, we dismiss his appeal as abandoned.

II

PROCEDURAL BACKGROUND

On January 18, 2011, pursuant to a negotiated plea agreement, defendant pleaded guilty to three counts of second degree robbery as charged in counts 3, 4, and 5 of the first amended felony complaint. Defendant also admitted that in the commission of count 3, he personally used a firearm within the meaning of Penal Code¹ section 12022.53, subdivision (b), and that he committed count 3 for the benefit of, at the direction of, or in association with a criminal street gang (§186.22, subd. (b)(1)). He further admitted that he suffered a prior serious or violent felony strike conviction in

¹ All future statutory references are to the Penal Code unless otherwise stated.

1996 (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). In return, the remaining 25 counts and enhancement allegations were dismissed under section 1385, and defendant was promised a stipulated sentence of 30 years.

On June 24, 2011, the trial court denied defendant's motion to withdraw his guilty pleas and admissions. The court thereafter sentenced defendant, in accordance with the plea agreement, to a total term of 30 years in prison. Defendant's sentence included a consecutive 10-year term for the firearm use enhancement under section 12022.53, subdivision (b). He did not appeal the judgment, which became final.

Thereafter, on January 1, 2018, Senate Bill No. 620 became effective. (Stats. 2017, ch. 682, § 2.) Per that legislation, trial courts now have discretion to strike firearm enhancements in the interest of justice. (§ 12022.53, subd. (h).)

On July 26, 2019, defendant filed a petition for resentencing under Senate Bill No. 620 and newly enacted section 12022.53, subdivision (h).

On September 30, 2019, the trial court denied the petition, noting "Court declines to hold a hearing pursuant to Senate Bill 620 because this was a plea negotiation and agreement entered into by the parties."

On November 14, 2019, defendant filed a timely notice of appeal from the court's order denying his petition for resentencing under Senate Bill No. 620.

III

DISCUSSION

After defendant appealed, upon his request, this court appointed counsel to represent him on appeal. Counsel has filed a brief under the authority of *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, setting forth a statement of the case, a summary of the procedural background and potential arguable issue,² and requesting this court to conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, and he has not done so. Thus, no claim of error has been raised.

Review pursuant to *Wende, supra*, 25 Cal.3d 436 or its federal constitutional counterpart *Anders, supra*, 386 U.S. 738 is required only in the first appeal of right from a criminal conviction. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 555; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 536-537 (*Ben C.*); *People v. Serrano* (2012) 211 Cal.App.4th 496, 500-501 (*Serrano*); *People v. Thurman* (2007) 157 Cal.App.4th 36, 45.)

The right to *Anders/Wende* review applies only at appellate proceedings where defendant has a previously established constitutional right to counsel. (*Serrano, supra*, 211 Cal.App.4th at p. 500; *Ben C., supra*, 40 Cal.4th at pp. 536-537.) The constitutional right to counsel extends to the first appeal of right, and no further. (*Serrano*, at pp. 500-

² Appointed appellate counsel notes the potential issue as assuming Senate Bill No. 620 applies retroactively, did the trial court err in refusing to conduct a hearing on the grounds the gun enhancement was imposed as part of a plea agreement.

501.) The appeal before us, “although originating in a criminal context, is not a first appeal of right from a criminal prosecution, because it is not an appeal from the judgment of conviction.” (*Id.* at p. 501.) While a criminal defendant has a right to appointed counsel in an appeal from an order after judgment affecting his substantial rights (Pen. Code, §§ 1237, 1240, subd. (a); Gov. Code, § 15421, subd. (c)), that right is statutory, not constitutional. Thus, defendant is not entitled to *Wende* review in such an appeal. (See *Serrano*, at p. 501 [no *Wende* review for denial of postconviction motion to vacate guilty plea pursuant to Penal Code section 1016.5].)

Applying *Serrano* here, defendant has no right to *Anders/Wende* review of the denial of his petition for resentencing under newly amended section 12022.53, subdivision (h). Because neither defendant nor his counsel has raised any claim of error in the trial court’s denial of the petition at issue here and because this appeal concerns a postjudgment proceeding in which there is no constitutional right to counsel, we must dismiss defendant’s appeal as abandoned.

Moreover, newly amended section 12022.53, subdivision (h), does not apply where, as here, the defendant’s sentence was final before the section came into effect. (See *People v. Hargis* (2019) 33 Cal.App.5th 199, 209.) The judgment became final when the time to petition the United States Supreme Court for writ of certiorari expired. (*People v. Harris* (2018) 22 Cal.App.5th 657, 659, fn. 2.) The trial court here therefore lacked jurisdiction to grant defendant’s resentencing request. (See *People v. Johnson*

(2019) 32 Cal.App.5th 938, 941; *People v Fuimaono* (2019) 32 Cal.App.5th 132, 135
(*Fuimaono*).)

Defendant's judgment, which he did not appeal, became final long before Senate Bill No. 620 amended section 12022.53. As such, defendant's substantial rights were not affected and the order denying the petition is not appealable; hence, the appeal must be dismissed. (See *Fuimaono, supra*, 32 Cal.App.5th at p. 135.)

IV

DISPOSITION

The appeal is dismissed.

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CODRINGTON
Acting P. J.

We concur:

FIELDS
J.

MENETREZ
J.